

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 3, 2005

10:10 A.M.

Reported by:
Christopher Loverro
Contract No. 150-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Joseph Desmond, Chairperson

Arthur Rosenfeld

James D. Boyd

John L. Geesman

Jackalyne Pfannenstiel

STAFF PRESENT

B.B. Blevins, Executive Director

William Chamberlain, Chief Counsel

Chuck Najarian

Joseph Wang

Valerie Hall

Pramod Kulkarni

PUBLIC ADVISER

Nick Bartsch

ALSO PRESENT

John A. McKinsey, Attorney
Stoel Rives, LLP

Ershel C. Redd, Jr.
NRG Energy, Inc.

Dana Palmer, Attorney
Santa Monica Baykeeper
Heal The Bay

Tom Luster
California Coastal Commission

Shelley Luce
Santa Monica Bay Restoration Commission

Evelyn Kahl, Attorney
Alcantar & Kahl, LLP

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P R O C E E D I N G S

10:10 a.m.

CHAIRPERSON DESMOND: Call the meeting to order. If those present would please rise and join me in reciting the Pledge of Allegiance.

(Whereupon the Pledge of Allegiance was recited in unison.)

CHAIRPERSON DESMOND: Welcome, everyone. I have, before getting started, one blue card. I don't know if we have any folks on the phone here today, but as we do, please let us know.

First item on the agenda is the consent calendar, which includes items a through e, Peters Shorthand Reporting, Commonwealth Energy Corporation, Geopraxis, Ameresco and City of Sunnyvale.

COMMISSIONER BOYD: I'll move.

COMMISSIONER GEESMAN: I'll second.

CHAIRPERSON DESMOND: All those in favor?

(Ayes.)

CHAIRPERSON DESMOND: Opposed? So moved.

Agenda item number 2, which is Luz Solar Partners. Possible approval of a petition to

1 modify the SEGS IX project to change the
2 contractual method for delivering up to 75
3 acrefeet of water annually to the Harper Lake
4 wetlands.

5 And I know this has been an ongoing
6 issue trying to resolve how to transfer that water
7 for some time. Mr. Munro.

8 MR. NAJARIAN: Chuck Najarian, --

9 CHAIRPERSON DESMOND: Oh, sorry. Thank
10 you, Chuck.

11 MR. NAJARIAN: -- Power Plant Compliance
12 Program Manager. Good morning.

13 This item concerns a petition to modify
14 the decision for the Luz SEGS IX and X solar
15 electric generation project. It specifically
16 addresses logistics in providing water for the
17 Harper Lake wetlands.

18 Now, the project was certified in
19 February of 1990. It's located in the western
20 Mojave Desert. Luz SEGS IX has been operational
21 since 1990. It produces 80 megawatts. Luz SEGS X
22 is only partially constructed.

23 The project is owned by Luz Solar
24 Partners; it's operated by FPL Energy Operating
25 Services.

1 The original decision required the
2 project owner to provide blowdown and well water
3 to Harper Lake wetlands. The water was to meet
4 the requirements of the BLM Lahontan Regional
5 Water Quality Control Board and the California
6 Department of Fish and Game.

7 A series of issues in the 1990s impeded
8 the delivery of water, including Lahontan's and
9 BLM's concern about water quality, a bankruptcy by
10 the then-project owner. In addition, other
11 parties raised various other issues including, for
12 example, Vandenberg Air Force Base was concerned
13 about the bird flight hazards to their aircraft.

14 In 2000, after somewhat lengthy
15 negotiations with BLM and other parties, an
16 agreement was reached. And the Commission
17 approved an amendment requiring the project owner
18 to provide funds to the BLM for establishing well
19 and water conveyance systems for the wetlands; and
20 to transfer water rights to the BLM.

21 Subsequently BLM determined it could not
22 accept state water rights because doing so would
23 make a federal agency subject to state law. This
24 started a new round of negotiations. It resulted
25 in a new agreement. And in the interim, water has

1 been pumped to the Harper Lake wetlands when
2 requested by BLM. It's done so through an
3 informal arrangement with the project owner and
4 The Friends of Harper Lake.

5 Luz Solar Partners has now submitted a
6 new petition consistent with the new agreement
7 negotiated with staff, BLM and other parties,
8 which will enable BLM to pump well water for
9 maintenance of the Harper Lake wetlands without
10 transfer of water rights to the BLM.

11 Luz Solar Partners also requested
12 deleting a requirement to pay \$60,000 to the BLM
13 for the well water conveyance system because the
14 moneys have already been paid, and the system is
15 already in place.

16 Staff analyzed the petition; believes
17 that it's appropriate that there's no impacts
18 associated with the petition. It's consistent
19 with the agreement. It would result in
20 modification of biological resources condition
21 Bio-11(k), as I previously specified.

22 All public noticing requirements have
23 been met. There's been no public comments. All
24 the necessary findings pursuant to our regulation
25 section 1769 can be met.

1 Staff recommends the Commission approve
2 the project modification and the associated
3 revisions to biological conditions of
4 certification. Happy to answer any questions if
5 you have them.

6 COMMISSIONER GEESMAN: Mr. Chairman, the
7 Siting Committee took this up and recommends the
8 item be approved. So I would make such a motion.

9 COMMISSIONER BOYD: I'll second.

10 CHAIRPERSON DESMOND: All those in
11 favor?

12 (Ayes.)

13 CHAIRPERSON DESMOND: Opposed? So
14 moved. Thank you.

15 Agenda item number 3 is the Inland
16 Empire Energy Center. Possible approval of a
17 petition to transfer the ownership to Southern
18 California Edison of the .9 mile overhead 500 kV
19 transmission line that connects the Inland Empire
20 Energy Center facility to the Valley Substation.
21 And the petition also requests approval to delete
22 a condition of certification pertaining to
23 electric and magnetic fields.

24 MR. NAJARIAN: Thank you.

25 CHAIRPERSON DESMOND: Yes.

1 MR. NAJARIAN: This item concerns a
2 petition to modify the Inland Empire Energy Center
3 project. The project is certified as a 670
4 megawatt project, in December of 2003. It's
5 located in Riverside County. It's owned by Inland
6 Empire Energy Center, LLC. General Electric is
7 the parent company.

8 It began construction in September last,
9 actually September 1 of '05. Construction of the
10 transmission line is expected to begin in January
11 of '06.

12 Approval of this petition would change
13 the ownership of the transmission line portion of
14 the project to Southern California Edison. And
15 given ownership by a regulated utility, it would
16 eliminate certain unnecessary transmission line
17 requirements.

18 The transmission line portion of the
19 project will be 500 kV and it will be .9 miles
20 long. It will connect to the Edison Valley
21 Substation. It will be in an existing Edison
22 transmission line corridor.

23 Edison already has an existing complaint
24 resolution program regarding interference with
25 radio and television signals. Therefore, the

1 petitioner requests deletion of redundant
2 reporting requirements in that regard.

3 In addition, Edison's building practices
4 fully integrate CPUC safety requirements regarding
5 electrical safety and field intensity. Therefore,
6 the petitioner requests deletion of requirements
7 to report electric and magnetic field
8 measurements.

9 Given that Edison has a certified safety
10 and signal interference program in place, and that
11 the .9 mile transmission line is in an existing
12 corridor already meeting CPUC EMF and signal
13 interference requirements, staff concurs with the
14 requested change.

15 All public notice requirements have been
16 met in this regard. There's been no comments on
17 this petition. All the necessary findings
18 pursuant to section 1769 of the regulations can be
19 met. And staff recommends approval of this
20 ownership change and modification.

21 Happy to answer any questions if you
22 have them.

23 COMMISSIONER PFANNENSTIEL: Just one
24 question. And I couldn't tell from the writeup.
25 So Edison is actually constructing the line?

1 MR. NAJARIAN: That's correct.

2 COMMISSIONER PFANNENSTIEL: But it is
3 owned at the time under the existing project. So
4 even though Edison is constructing it, we need to
5 approve the change in -- transfer the change in
6 ownership?

7 MR. NAJARIAN: As of right now Edison
8 does not own the line. If you were to approve the
9 petition they would --

10 COMMISSIONER PFANNENSTIEL: Correct, I
11 understand that.

12 MR. NAJARIAN: -- assume ownership, and
13 they would construct the line. Construction of
14 the line is connected to the ownership approval.

15 COMMISSIONER PFANNENSTIEL: I see.

16 CHAIRPERSON DESMOND: Okay. I have no
17 questions.

18 COMMISSIONER GEESMAN: Mr. Chairman, the
19 siting Committee reviewed this matter and would
20 recommend approval of the petition.

21 COMMISSIONER BOYD: And I'll second that
22 motion.

23 CHAIRPERSON DESMOND: Very well. All
24 those in support?

25 (Ayes.)

1 CHAIRPERSON DESMOND: Opposed? So
2 moved. Thank you.

3 Item number 4, City of Buenaventura.
4 Possible approval of a loan augmentation of
5 \$116,740 to the City of San Buenaventura's
6 existing loan of \$337,920 for a total of \$454,660.
7 The loan augmentation needed due to higher
8 equipment costs than estimated, and will be used
9 to install energy efficient lights, energy
10 management controls and variable frequency drives
11 on City HVAC systems in various City facilities.
12 Mr. Wang.

13 COMMISSIONER PFANNENSTIEL: Joseph,
14 would you turn on your mike, please.

15 CHAIRPERSON DESMOND: Microphone.

16 COMMISSIONER PFANNENSTIEL: Thank you.

17 MR. WANG: Good morning, Commissioners.
18 My name is Joseph Wang, and I'm the Project
19 Manager for this loan. The City of Buenaventura
20 has a existing loan with us. And they sent out a
21 bid in July, earlier this year. And the bids came
22 in higher than they expected. And they have a
23 rebate requirement with SCE to complete all the
24 projects by the end of the year.

25 So instead of rebid the project they

1 would like to request additional loan augmentation
2 of \$116,740 to complete the project by the end of
3 the year.

4 The staff has reviewed this project and
5 still feels the payback is fairly short, and would
6 recommend approval of this project.

7 CHAIRPERSON DESMOND: Thank you.

8 COMMISSIONER PFANNENSTIEL: Mr.
9 Chairman.

10 CHAIRPERSON DESMOND: Commissioner.

11 COMMISSIONER PFANNENSTIEL: With a 3.3
12 year payback I move the project.

13 COMMISSIONER ROSENFELD: Second.

14 CHAIRPERSON DESMOND: All those in
15 favor?

16 (Ayes.)

17 CHAIRPERSON DESMOND: Opposed? So
18 moved. Thank you.

19 Second item, Mr. Wang. City of
20 Victorville. Possible approval of a loan for
21 \$272,004 to the City of Victorville to be used to
22 install 14 packaged Ice Bear thermal energy
23 storage systems at five city facilities. And the
24 project is estimated to save about \$27,711
25 annually, and has a simple payback of 9.8 years.

1 MR. WANG: I'm also the Project Manager
2 for this loan. The City of Victorville has sent
3 an application to basically install these packaged
4 thermal energy storage systems to basically
5 displace the onpeak energy use for their HVAC
6 needs.

7 And the City will install all these
8 packaged thermal energy storage systems at the
9 fire station and corporation yard, police
10 department.

11 So, each of these package unit can
12 provide up to 50 ton hours, which basically can
13 supply 7.5 ton of packaged air conditioning system
14 for up to six hours. So this will be the first of
15 the many package phases. They're going to convert
16 their air conditioning systems to thermal energy
17 storage system.

18 And the staff has reviewed this project
19 and recommended approval of this loan.

20 COMMISSIONER GEESMAN: I have a
21 question.

22 CHAIRPERSON DESMOND: Yes, Commissioner.

23 COMMISSIONER GEESMAN: When you
24 calculate payback for a project like this, do you
25 calculate it on the basis of time-of-use rates so

1 you capture that peak value, or --

2 MR. WANG: Yes, indeed. City buildings
3 are currently on GS2 SCE rate schedule, demand
4 rate schedule. And all these facilities will be
5 converted to GS2 time-of-use option B to take
6 advantage of the time-of-use rate shift.

7 COMMISSIONER ROSENFELD: I have a
8 question, too, Joseph. In the previous issue for
9 the City of Buenaventura you talked about payback
10 after incentives. In this case you didn't mention
11 incentives. Are there no incentives for thermal
12 storage?

13 MR. WANG: Right now SCE does not
14 provide any incentive for load shifting.

15 COMMISSIONER ROSENFELD: We got to get
16 on their backs, okay.

17 (Laughter.)

18 COMMISSIONER ROSENFELD: No other
19 questions.

20 CHAIRPERSON DESMOND: I just had a --
21 I'm sorry, Commissioner Pfannenstiel.

22 COMMISSIONER PFANNENSTIEL: And this is
23 a proven technology?

24 MR. WANG: Well, this is the first of
25 its kind. And we have visited the City College

1 demonstration site in Sacramento. And they are
2 installing a new compressor, ice-making
3 compressor, along with this packaged thermal
4 energy storage system. And they are running in
5 parallel with their existing air conditioning
6 system.

7 During onpeak period the existing system
8 will be locked out, so we believe this is
9 feasible. And we will -- staff intends to monitor
10 this project very carefully.

11 COMMISSIONER PFANNENSTIEL: But it is
12 being done as a pilot. And as such, we'll get --
13 at least the Efficiency Committee will get regular
14 reports on its progress and whether there are any
15 technical problems?

16 MR. WANG: Yes.

17 COMMISSIONER PFANNENSTIEL: It's the
18 first one we have supported, but I assume it's not
19 the first one around the state, is that correct?

20 MR. WANG: No. SCPPA has -- Southern
21 California Government Association has put in quite
22 a few demonstration units. They have all had good
23 reports on these packaged thermal energy storage
24 systems.

25 COMMISSIONER PFANNENSTIEL: Excellent.

1 So we'll look forward to your reports.

2 MR. WANG: Yes.

3 COMMISSIONER PFANNENSTIEL: Thank you.

4 COMMISSIONER GEESMAN: How does a
5 technology like this fit into our building
6 standard process?

7 MR. WANG: Right now Ice Energy, LLC is
8 submitting a compliance options to get some kind
9 of building standard credits. However, there is
10 not enough, you know, data in all of the
11 California climate zones. So they are currently
12 being evaluated. And we're going to do more
13 testing on measurement evaluation on this system.

14 COMMISSIONER ROSENFELD: We did get a
15 visit from Ice Bear. And with time-dependent
16 valuation in, I don't remember whether it was half
17 or two-thirds of the climate zones, it looks
18 great.

19 COMMISSIONER GEESMAN: I just think that
20 -- and it's one of the items that we highlighted
21 in the draft IEPR -- we haven't really captured
22 some of the peak load savings that are available.
23 And a technology that can help us in that area, I
24 think, ought to be a priority for our
25 consideration; and for the consideration in

1 utility programs. You mentioned SCPPA. I would
2 expect the investor-owned utilities should pay
3 pretty close attention to this, as well.

4 MS. HALL: Commissioners, if I may.

5 COMMISSIONER PFANNENSTIEL: Please.

6 CHAIRPERSON DESMOND: Go ahead.

7 MS. HALL: This is Valerie Hall with the
8 Efficiency and Renewables Demand Analysis
9 Division. This technology has come forward as a
10 compliance option under the current set of
11 regulations, the 2005 building standards.

12 The 2005 building standards are the
13 first time in which the standards used time-
14 dependent valuation. In other words, the
15 standards recognize the additional need for
16 savings at peak, and provide greater credit to
17 those technologies which help to reduce energy use
18 at peak.

19 This technology has just recently been
20 submitted by the Ice Bear, along with a number of
21 other partners, into the compliance option
22 process. Should all the information be there and
23 can be evaluated -- and we're looking at that
24 right now -- it could be approved for the use in
25 the 2005 standards. And that would make it

1 available prior to the 2008 standards.

2 And during the 2008 cycle what would
3 normally happen is anything that comes onboard in
4 the previous cycle, 2005, as a compliance option
5 should automatically be embedded into the 2008
6 cycle.

7 COMMISSIONER PFANNENSTIEL: When will we
8 get the results for the testing for the 2005
9 standards?

10 MS. HALL: Well, one of the things that
11 we're looking at is whether or not the information
12 that's been brought forward is, in fact, exactly
13 the same system that's being -- that as been
14 brought forward through the loan process. And
15 there may be some differences in the technology
16 that's being submitted for the building standards
17 than the particular technology that's been brought
18 forward through the loan process.

19 So, we are bringing all the forces
20 together to look and assess this. We have been
21 speaking with the proponents of this particular
22 technology. And as a matter of fact there's
23 another meeting, another discussion scheduled
24 tomorrow. So this is an ongoing discussion with
25 the applicant.

1 COMMISSIONER PFANNENSTIEL: But, since
2 the '05 standards went into effect a month ago,
3 I'm assuming that we're trying to make a decision
4 on this expeditiously so these can be used to meet
5 those standards.

6 MS. HALL: Yeah, this is normal. During
7 a particular cycle new technologies that come in
8 have this sort of sidebar process, this compliance
9 option process that allows new technologies to be
10 assessed for how they can be used within the
11 structure of the standards.

12 So, yes, we will be looking at this
13 quickly and seeing whether it meets all the
14 requirements and can be used as part of the
15 standards process.

16 COMMISSIONER PFANNENSTIEL: Thank you.

17 CHAIRPERSON DESMOND: My question, Mr.
18 Wang, given that that 9.8 payback is right at the
19 end of say 10 years, do those savings calculations
20 include any operational and maintenance cost
21 reductions? Or is that purely electrical demand
22 cost avoidance?

23 MR. WANG: This payback's only based on
24 energy savings, alone. Maintenance costs is not
25 included.

1 CHAIRPERSON DESMOND: Very good. Any
2 further questions.

3 COMMISSIONER PFANNENSTIEL: I move the
4 item.

5 COMMISSIONER ROSENFELD: Second,
6 enthusiastically.

7 CHAIRPERSON DESMOND: Very good. All
8 those in favor?

9 (Ayes.)

10 CHAIRPERSON DESMOND: Opposed? So
11 moved. Thank you.

12 MR. WANG: Thank you.

13 CHAIRPERSON DESMOND: Next item on the
14 agenda is number 6. El Segundo Power
15 Redevelopment Project. Possible consideration of
16 a petition to modify the El Segundo Power
17 Redevelopment Project to delay the required \$5
18 million payment of biological mitigation funds to
19 the Santa Monica Bay Restoration Commission.

20 Mr. Najarian. By the way, I have two
21 blue cards -- three -- and do we have anyone on
22 the phone? Okay, very good. Go ahead.

23 MR. NAJARIAN: This item concerns a
24 petition to modify the El Segundo Power
25 Redevelopment Project. If approved it would delay

1 the timing of required payments to the Santa
2 Monica Bay Restoration Commission to study the
3 Santa Monica Bay ecosystem and to implement
4 actions to improve the ecological health of the
5 Bay.

6 The project was originally certified by
7 the Commission at a special business meeting in
8 December of '04. In February of '05 the
9 Commission adopted a new decision errata and
10 additional findings.

11 Was certified as a 630 megawatt natural
12 gas-fired, combined cycle project located in the
13 City of El Segundo. The license is owned by El
14 Segundo Power, LLC.

15 Construction has not commenced and the
16 project owner does not have an estimated date and
17 time for the start of construction or commercial
18 operations.

19 El Segundo Power, LLC filed their
20 petition on September 30, 2005, requesting that
21 payments to the Santa Monica Bay Restoration
22 Commission start 90 days prior to commencement of
23 construction of the new generating units.

24 The Energy Commission required payments
25 to start 30 days after the decision became final.

1 The petitioner states that changes are
2 necessitated by their inability to obtain a power
3 purchase contract.

4 For the purposes of triggering this
5 payment the decision was final on August 31, 2005
6 when the California Supreme Court denied a
7 petition challenging the certification.
8 Therefore, the first payment was due on September
9 30, 2005.

10 The decision requires the project owner
11 to provide a total of \$5 million. The first \$1
12 million is to be provided in four payments of
13 \$250,000 each, starting September 30, 2005, and
14 continuing every 90 days thereafter until \$1
15 million has been provided. And at that time a
16 payment schedule for the remaining \$4 million is
17 to be established and approved by staff.

18 The regulations specify that the Energy
19 Commission may approve a project modification only
20 if it finds, among other things, that there has
21 been a substantial change in circumstances since
22 the Commission's certification justifying the
23 change. Or that the change is based on
24 information which was not available to the parties
25 prior to Commission certification.

1 Staff reviewed the record in this case,
2 and in particular the December 2004 special
3 business meeting transcript.

4 We found that the same request to start
5 payments 90 days prior to the start of
6 construction of the new generating units was made
7 at that time. The applicant argued they were
8 unable to negotiate a power purchase agreement,
9 and therefore lack of financing to comply with the
10 schedule of payments. Quote: Money is not able to
11 be paid until we actually have a contract and we
12 have financed this process."

13 The record shows that the Commission
14 considered these arguments, but expressed a need
15 to start the study promptly rather than wait until
16 the plant was under construction. The Commission
17 expressed that the first \$1 million provides
18 necessary seed money to get the study going
19 quickly.

20 Therefore, staff concludes that the
21 petitioner has not established a change in
22 circumstances or shown there is new information
23 that was not available at the time of
24 certification.

25 The status of the power purchase

1 contract has not changed. The contract was not in
2 place or being negotiated at the time of
3 certification; and the contract is not in place or
4 being negotiated today.

5 And more importantly, this same contract
6 issue was already considered by the Commission
7 prior to certification.

8 Therefore, staff recommends denial of
9 the petition, and that the Commission agrees that if
10 the project owner be required to initiate payments
11 within 30 days.

12 That concludes my presentation. I'm
13 aware that the project owner representatives are
14 here today, as well as other parties. And they
15 would all like to make comments.

16 CHAIRPERSON DESMOND: Very good. Why
17 don't we start with the applicant.

18 MR. MCKINSEY: Thank you, Chairman
19 Desmond and Commissioners. My name is John
20 McKinsey and I'm here on behalf of the project
21 owner. And I'd just make a -- it's a very minor
22 correction, but needed. The actual project owner
23 is El Segundo Power II, LLC, which is a separate
24 entity from El Segundo Power, LLC, which operates
25 the existing facilities on the site. They both

1 have the same owners, NRG Energy, Incorporated,
2 and Dynegy, Incorporated.

3 With me also is a representative from
4 NRG, Mr. Ershel Redd, who will speak somewhat
5 about what's been going on in the last year in
6 their efforts to attempt to build this project and
7 fill those needs.

8 I'd really like to start off by kind of
9 emphasizing this project, which took a long time
10 and had certainly a substantial amount of
11 participation, has never failed to attract a
12 significant number of comments. And we expected
13 that with this change, as well. And we didn't
14 take this lightly.

15 Our comments -- our initial petition, as
16 well as our comments, I think, respond to most
17 everything that we've heard. And I'm not going to
18 try to repeat the various things. I wanted to
19 emphasize that one of the things that caught us by
20 surprise last week was the Coastal Commission's
21 assertions and essentially allegations that either
22 we had been deceiving the Commission for five
23 years, or had been unaware of what the conditions
24 were at the plant. And I think we rebutted that
25 very specifically to explain exactly what the real

1 facts were, and that those are entirely incorrect
2 and false.

3 And then I'm somewhat surprised by the
4 staff's position that this petition cannot be
5 approved purely on a procedural legal grounds that
6 there's not been a sufficient change in
7 circumstances or be based on information that was
8 not known at the time.

9 We specifically cited subsection (c) of
10 the same regulation which recognizes that changes
11 can be made based on facts that were known at the
12 time of certification. And, in fact, in very good
13 faith, almost a year ago in December, we raised
14 those issues. And we said, you know, we've got
15 some concern here and it's particularly because
16 this is requiring a substantial payment. And it's
17 the full \$5 million payment that we see that by
18 making the first one we're stepping down the path
19 of making a \$5 million payment. And we don't know
20 that we can actually construct this project.

21 And we were concerned, and from the
22 minute we had the decision we went into a mode
23 where we had to evaluate how do we handle this.
24 We were given, thanks to the challenge of this
25 case, we were given a substantial period of time

1 to attempt to find a contract -- or to at least
2 get some certainty that despite the fact that our
3 capacity is very much needed, that it would
4 actually be accepted by the state. And we were
5 unable to.

6 In other words, this is not anything a
7 whole lot different than about a year ago a change
8 that was made to the Otay Mesa project. Almost
9 identical. And, in fact, in the change to Otay
10 Mesa it wasn't a payment for an enhancement, an
11 improvement or a benefit, it was an actual \$1.2
12 million payment that was required for mitigation
13 for air effects.

14 And almost identical circumstances in
15 the case of Otay Mesa, but perhaps even less. All
16 they cited was ongoing uncertainty regarding the
17 electricity market and their inability to
18 construct. And that was considered more than
19 adequate grounds as an actual change in
20 circumstances; let alone the argument that we
21 raised it anyway. That was considered more than
22 adequate grounds to approve a substantial change
23 in the timing of the \$1.2 million payment.

24 So, that's why I'm very surprised. And
25 I don't think there's really any legal grounds to

1 say that you don't have the authority or the
2 ability to approve our petition.

3 More importantly, and what we want to
4 emphasize is that we wouldn't be before you today
5 unless we were attempting to keep this project
6 alive. This is not an effort at shirking
7 responsibility. And, in fact, it's really an
8 effort at maintaining both the viability of this
9 project as well as all of its benefits.

10 And those benefits include the payment
11 of the \$5 million and the subsequent enhancements
12 and contributions to the understanding and the
13 knowledge and the health of the Santa Monica Bay.
14 That's one of many of the benefits of this
15 project, which we remain very committed to. But
16 we have to be able to build the project. And to
17 build the project we have to be able to know that
18 somebody will actually want to buy its
19 electricity, despite a lot of other things that
20 we're very aware of.

21 I'd like to shift to Mr. Redd, and I'd
22 like to have him speak a little bit about that
23 point.

24 MR. REDD: Mr. Chairman, Sitting
25 Commissioners, Commission Staff, I appreciate the

1 opportunity to speak today. I am Ershel Redd; I'm
2 the Executive Vice President of NRG Energy; I also
3 serve as the President of the Western Region, a
4 role that I took on in March of 2004.

5 I joined NRG in 2002 to restructure that
6 organization. I tell you this because it tells
7 you a little bit about the culture of the company.
8 They were a very speculative organization. They
9 speculated on market growth; they bought; they
10 overpaid; they overbuilt. I went into a company
11 that had \$10.5 billion worth of debt. Enough cash
12 flow to support 40 percent of that debt. And we
13 had to restructure it.

14 We did put it into bankruptcy of May of
15 '03; took it out in November of '03; and have
16 effectively been running it as a good business
17 every since.

18 NRG owns half of West Coast Power, a
19 joint venture with Dynegy, Inc., that owns several
20 power plants in southern California, including the
21 El Segundo Plant.

22 I do remain committed to this project,
23 to build this project, because I think the state
24 needs it. And if you believe the draft report
25 that came out within the last few days by the CEC,

1 where they indicate that by 2009 in the low demand
2 case in the Southern California Edison area
3 they're going to need around 8500 megawatts of new
4 capacity. New capacity that effectively is not in
5 the pipeline now.

6 But I will not build this plant, commit
7 to build this plant until we have a suitable
8 offtake agreement for the capacity of that plant
9 that will attract financing.

10 I also remain committed to the Bio-1
11 payments. But, again, only after we have a
12 suitable offtake agreement that will produce
13 appropriate financing.

14 Again, I said, NRG, in the past, got
15 trouble speculating. West Coast Power is not
16 going to do the same thing. And I don't think
17 we're really speculating on the megawatt needs of
18 California because we really believe reports such
19 as this. I mean you have the fourth largest -- I
20 mean the fifth largest economy in the world. And
21 to support that you need a reliable grid system.

22 This is a plant located in the west Los
23 Angeles load basin that will help support the
24 integrity and the reliability of that grid system.

25 What we're really speculating on is the

1 market reforms here in California. And so far
2 they haven't been forthcoming. Now, I want you to
3 understand that I'm heavily involved and engaged
4 in the discussions around the market reforms, the
5 ones that would be necessary to create a viable
6 and reliable grid system that would support the
7 economic growth that all of you enjoy here in this
8 state. And I remain committed to working with
9 that group of reformers.

10 But I do have a fiduciary responsibility
11 to my shareholders to earn a return on every
12 dollar of capital that I invest. This is not a
13 utility. If I invest a dollar and it becomes
14 stranded I take it back and feed it to the
15 shareholders. The ratepayers don't pay for it.
16 We're an entrepreneurial business, a
17 nonregulated -- maybe I shouldn't say that -- a
18 nonutility business. And our shareholders end up
19 eating all the bad decisions we make.

20 Now, we did anticipate having a contract
21 by now. I guess I was speculating on market
22 performance that didn't happen fast enough. We do
23 anticipate that if we get the market reforms right
24 that we will have the opportunity to get a
25 contract.

1 There's been only one RFO issued for new
2 generation in that area, and that was issued by
3 Southern California Edison. Unfortunately it was
4 for peaking capacity and this is permitted for
5 combined cycle.

6 That RFO has since been withdrawn, and
7 it was withdrawn simply because the CPUC would not
8 agree to the cost allocation that Southern
9 California had asked for.

10 We continue to be plagued by
11 disincentives for load-serving entities to
12 contract. And these are institutionalized
13 disincentives. And let me just mention a few.
14 The FERC must-offer order; RMR agreements. And
15 then there was a recently issued CPUC resource
16 adequacy order that liberalized the phase out of
17 firm LD contracts and failed to address local
18 capacity requirements. Local capacity
19 requirements would point to sites like El Segundo
20 and say you must procure in the load.

21 We will continue the origination
22 efforts. I mean I'm doing it every day. I'm
23 talking to those who would be prospective buyers
24 of capacity. But until we get the market reforms
25 we're not going to see a buyer step up to the

1 plate and contract.

2 So, you know, if you truly believe that
3 California needs the megawatts that's in this
4 report, I think you will agree to, for the sake of
5 California you need to accept our petition to
6 suspend these payments only until we get a
7 suitable offtake agreement with financing in
8 place.

9 Thank you.

10 MR. MCKINSEY: And let me just kind of
11 emphasize, the situation we find ourselves in is
12 that with an inability to responsibly make any
13 payments for the funding of the program, and with
14 the imposition of this very immediate after
15 finality we're placed in a situation of
16 considering returning the decision and walking
17 away from this project.

18 And we're not throwing that out as some
19 type of a bluff. It's a very real consideration,
20 and that's what I indicated to you that we're here
21 to attempt to keep this project alive. And the
22 personnel that I have with me today are all
23 advocates of this project. And they're frustrated
24 by the timing and these circumstances. And we're
25 making this request truly as a needed change that

1 allows us to continue to make these efforts to
2 find a contract and build this project, knowing
3 that it's very needed. And the loss of this
4 project, we think, in and of itself, would be a
5 travesty.

6 COMMISSIONER GEESMAN: We have others to
7 be heard. Do you want questions now?

8 CHAIRPERSON DESMOND: Well, we can hear
9 from others, or we can go to some specific
10 questions of the applicant.

11 COMMISSIONER GEESMAN: Well, I guess I
12 have a question. You say you're looking for a
13 contract. There's really only one place to look,
14 isn't there?

15 MR. REDD: That's true.

16 COMMISSIONER GEESMAN: It just seems to
17 me that we're here today largely as a result of an
18 accumulation of state failures, and I would
19 suggest, Southern California Edison failures, to
20 recognize our supply and demand balance in
21 southern California. And not to have successfully
22 initiated, at least as of this date, a long-term
23 procurement process that would have resulted in a
24 contract quite some time ago.

25 And I'm hopeful that the report you cite

1 and what I would anticipate the followup to it,
2 will change that situation, and change it next
3 year. But it's going to be next year before
4 realistically there's any time to change that.

5 Anything that keeps you from
6 establishing a bilateral contract with Edison, as
7 opposed to waiting for another RFO?

8 MR. REDD: I've talked to them
9 specifically about that, and the response is we
10 will never contract to buy a megawatt of capacity
11 unless it's done under a fair, open transparent
12 competitive process.

13 COMMISSIONER GEESMAN: And I think that
14 one of the principal failures we've had as a state
15 in this particular area is tolerating what I would
16 characterize a charade RFO that has eaten up this
17 entire last year. And I would hope that -- I mean
18 we've heard from Commissioner Peevey, we've heard
19 from Commissioner Grueneich.

20 I would hope, Mr. Chairman, that we
21 could continue to voice, as the regulating
22 entities in the state, a desire that this
23 situation be brought to a change, and a change
24 pretty quickly.

25 CHAIRPERSON DESMOND: Very good. Why

1 don't we hear from -- Commissioner.

2 COMMISSIONER PFANNENSTIEL: Yeah, one
3 question. The dollar amount that really is in
4 front of us is a million not 5 million, as I went
5 back and reread the material. The million, or
6 actually the quarter of a million in four
7 payments, is what's defined in front of us now.
8 And then the remainder of that is to be agreed
9 upon. So, really the project is turning on the
10 million dollars now?

11 MR. McKINSEY: Actually first, you know,
12 we read that pretty carefully, too. And you have
13 to pick the words really to figure out exactly
14 what it says, but we concluded pretty quickly that
15 we would ultimately end up paying in the full 5
16 million, and the only question would be whether
17 some of it might be returned if it was not
18 completely used. And it actually even indicates
19 that, that we have to pay into trust.

20 However, you're correct, it specifies we
21 first pay up to a million. Then there's the
22 decision about a full-scope, and a decision about
23 the remainder of the amount. I don't think
24 there's any ambiguity that they won't find the
25 ability to spend a full \$5 million on the Santa

1 Monica Bay. There are many needs.

2 The other thing, we're in a situation
3 where clearly at this point, having not started
4 any efforts to construct, we have the ability to
5 say we can't make this payment, but surrender the
6 decision and surrender the project. If we,
7 however, begin making these payments and start the
8 funding of this, we're essentially initiating a
9 condition and we're making the first payment on
10 one, and starting a process. And we don't think
11 we would have as good grounds to withdraw the
12 project after the first 250,000 or the next 250.

13 In other words, right now we think we
14 have the ability to withdraw the project and not
15 pay any money. If, however, we begin making
16 payments that may create the ability of the Energy
17 Commission to require that we make the full
18 payments under the condition.

19 So, we're not making a \$250,000
20 decision; we're making the \$5 million decision.
21 And we're being forced to at this time.

22 COMMISSIONER PFANNENSTIEL: But I just
23 want to be clear. After the first million
24 dollars, the remainder of that, there are two
25 features. First is that it is -- will depend, at

1 least to some extent, on an agreement that you
2 reach with other parties. But then second, it's
3 the timing of the remainder of that 5 million that
4 is completely open right now.

5 And it seems that if you are what you
6 have just represented, that the question really is
7 that you want to build the project, but you're not
8 sure of the timing because of the contractual
9 issues, the market structure issues.

10 Well, it seems to me that it really is a
11 timing question. And that is open.

12 MR. MCKINSEY: It is a timing question,
13 however I think the things that we just discussed
14 make us unsure that they will ever be resolved.
15 Meaning that the timing could be beyond the scope
16 of if we had the full five years to construct this
17 project, if we extended it.

18 In other words, we may never, it's
19 possible, ever be able to construct the project.
20 That's the reason why we see the timing payment.
21 We cannot get authority from our parent entities
22 to make these payments because they cannot see
23 that this is a viable project.

24 And they can't see that there is an end
25 in sight or a solution. From their perspective

1 they see California, and they see, at this point,
2 still no solutions. And no solutions forthcoming.
3 And that means that it's more than a timing
4 decision, it's an actual commitment of a sunk
5 cost, a \$5 million sunk cost, that we have no
6 assurances we'll ever be able to recover
7 whatsoever.

8 CHAIRPERSON DESMOND: Mr. McKinsey, I'd
9 disagree with that characterization. I think, as
10 Commissioner Pfannenstiel has pointed out here,
11 you're talking about a million-dollar option.
12 That the second 4 million of balance was, in fact,
13 a condition of the original, going back and having
14 reread the transcript three times -- and I have a
15 question for staff here in a moment -- but the
16 expectation is that ultimately there would be \$5
17 million contributed towards an overall study of
18 the Bay.

19 The timing is such that the first 1
20 million was intended to be started immediately;
21 then reaching the 1 million, the second balance of
22 that schedule.

23 Your previous testimony had indicated
24 that has always been your intent, to finance the
25 cost of that study into the overall project. I

1 mean, going back, and you were quite clear in the
2 original testimony about that these were not
3 starters, but nonetheless that was the decision
4 the Commission made at the time, which was to
5 place on the applicant in this instance the
6 requirement for a million dollars to get the study
7 going now.

8 And, in fact, reading through the
9 document, the theme of starting now came out; in
10 fact, the comments of Mr. Luster, who is scheduled
11 to speak here, all speak with the notion that it
12 would be difficult for Santa Monica Bay
13 Restoration Commission to even spend the million
14 dollars within a one-year capability. But
15 instead, a lot of that time being spent on the
16 establishment of protocols.

17 So, before -- let me turn to staff,
18 because here's where I think it's not entirely
19 clear in my mind, and I want to clarify that, that
20 at the very end of the last business meeting in
21 which this Commission was adopted, Commissioner
22 Boyd moved that, including in his motion the
23 250,000 paid within 30 days. And then 250,000
24 thereafter every three months until there's a
25 million. And with the rest being in accordance

1 with the original drafted provisions.

2 And I assume that those original drafted
3 provisions included your requirements that there
4 be some form of financing of construction or
5 contract that you have.

6 So, in my mind, as I look at this, this
7 is \$1 million, as an initial start. But until
8 there is that ability to even include this in the
9 balance, I don't see that obligation to come up
10 with the other 4 million unless you, in fact, have
11 an offtake with a contract.

12 And so the question to staff, actually,
13 is I have two documents here. One dated October
14 17th from Mark Pryor, in which on page 4 at the
15 top, it talks about the additional sum, first
16 line, shall be provided every 90 days thereafter
17 until 1 million has been provided. At that time
18 the Santa Monica Bay Restoration Commission, in
19 consultation with the project owner, shall propose
20 a schedule for the payment of the remaining funds.

21 That would indicate that it's the
22 Commission that has control over the balance being
23 required. Which, in my mind, is not clear.

24 And then the document from Terry O'Brien
25 on the 19th, at the bottom of the first page on

1 the second-to-the-last line says: Terms of a
2 schedule proposed by the project owner, in
3 consultation with SMBRC, and as approved by the
4 project manager.

5 So, which is it?

6 MR. NAJARIAN: We would interpret that
7 as, first of all, we believe that the staff would
8 have control over that because the condition Bio-1
9 specifies that the CPM must approve the schedule.

10 And in doing so, we would consider
11 issues associated with the project owner, as well
12 as issues and requests associated with the Santa
13 Monica Bay Restoration Commission.

14 So I think we would, on balance,
15 consider a variety of factors in determining that
16 schedule and approving it.

17 CHAIRPERSON DESMOND: Commissioner Boyd.

18 COMMISSIONER BOYD: Well, you've asked
19 my question of staff. And I just simply -- I
20 don't have any more questions for the applicant.
21 And I'd like to wait for --

22 CHAIRPERSON DESMOND: Comments.

23 COMMISSIONER BOYD: -- other comments --

24 CHAIRPERSON DESMOND: Very good.

25 COMMISSIONER BOYD: -- before I make any

1 comments.

2 CHAIRPERSON DESMOND: Okay. Why don't
3 we then hear first from Dana Palmer, Santa Monica
4 Baykeeper.

5 MR. PALMER: Good morning, Mr. Chair,
6 Commissioners. My name's Dana Palmer and I'm the
7 Staff Attorney at Santa Monica Baykeeper. I'm
8 pleased to be here today.

9 Today I'm representing both Santa Monica
10 Baykeeper and Heal The Bay. Both organizations
11 were intervenors in the certification proceedings
12 below. And we've submitted written comments for
13 the record. I hope you've had a chance to read
14 them.

15 Today we're urging the Commission to
16 deny ESP's request to alter a fundamental
17 condition of the plant's license. A condition
18 designed to strike a delicate balance between
19 environmental protection and electricity
20 production.

21 ESP's petition is really an end-run
22 attempt to change something in the decision that
23 they were not happy about. The proper recourse
24 for this would have been either a petition for
25 reconsideration or a petition to the California

1 Supreme Court.

2 The two environmental groups I'm
3 representing today know these methods well, and
4 know how difficult it is to succeed in either
5 path. This may explain why ESP has chosen to roll
6 the dice and wait till today to try their chances.

7 Both Energy Commission regulations and
8 prudence compel that you reject ESP's request. As
9 your staff has concluded, there has been no
10 appropriate change in circumstances as required in
11 the regulations. The regulations require such a
12 change in circumstances, in part, to level the
13 playing field between the public and the project
14 owner.

15 If, after a decision became final, a
16 project owner could simply walk into the
17 Commission and request a modification, no project
18 owner would ever have to confront the same
19 procedure for reconsideration or judicial review
20 as the public faces.

21 Besides the regulations, prudence
22 dictates rejecting ESP's request for two reasons.
23 First, the Bio-1 condition reflects a concerted,
24 if imperfect, attempt by the Commission to balance
25 environmental protection and electricity

1 production. Approval of ESP's petition would
2 upset this balance.

3 We believe the Commission took
4 extraordinary measures to satisfy the project
5 owner in the extended proceedings. And today's
6 petition represents nothing more than an
7 ungrateful poke in the Commission's eyes.

8 Second, ESP is more than capable of
9 making the payment. Independent and easily
10 available data confirmed this. I've provided some
11 citations in our written comments.

12 So an important question for the
13 Commission to ask today is this: Why has the
14 project owner completely ignored the Commission's
15 deadline for the first payment to the SMBRC,
16 instead submitting the current petition on the
17 last day the payment was to be due.

18 The Commission has made clear that the
19 validity of the certificate is predicated on the
20 timely performance of the conditions of
21 certification and compliance verifications.

22 In addition to violating Bio-1, we
23 believe that ESP has also violated Bio-4. In Bio-
24 4's verification provisions, and I can give you a
25 moment to turn to that, if you'd like, Bio-4

1 requires that the project owner shall consult with
2 the L.A. Regional Board, the Coastal Commission,
3 the Energy Commission Staff, the SMBRC, and the
4 Santa Monica Baykeepers to develop the appropriate
5 design for any 316(b) study.

6 Thus far the project owner has failed to
7 consult with Santa Monica Baykeeper on the 316(b)
8 study design. We're unsure whether the project
9 owner has consulted with the other parties
10 specified in Bio-4's verification provision, but
11 this would be a good question to ask them today.

12 So what should you do as the Commission
13 today? First, have some backbone. If you simply
14 look the other way project owners, including ESP
15 down the road perhaps, may not treat such
16 conditions as genuinely binding. There's no
17 excuse for and not legal authority to support
18 unilaterally ignoring the Bio-1 and Bio-4
19 conditions imposed by the Commission.

20 At a minimum, the Commission should
21 require that funds are transferred immediately
22 with interest to the SMBRC. And that future
23 payments are made per the schedule currently in
24 place.

25 But ESP should also be penalized for

1 ignoring the Commission. There should be no
2 reward for gaming the system. Rather than
3 administrative civil penalties, which we believe
4 to be applicable here, we suggest that the \$4
5 million remaining after the first four payments
6 are complete be due and payable on September 30,
7 2006.

8 The Commission should also remove the
9 condition that allows ESP to petition for the
10 return of any unspent funds upon beginning of
11 commercial operation. However, if this condition
12 remains a part of the decision, we hope that the
13 Commission remembers today as a reason why not to
14 return those funds.

15 Thank you very much. I'm available for
16 any questions.

17 CHAIRPERSON DESMOND: Next, Mr. Luster
18 from the California Coastal Commission.

19 MR. LUSTER: Good morning, Chair Desmond
20 and Commissioners. I'm Tom Luster, Staff to the
21 California Coastal Commission. Thank you very
22 much for the opportunity to speak today about this
23 request. I have just a few brief prepared
24 comments to build on those in the letter we sent
25 you last week. Then I'd be happy to answer any

1 questions you have.

2 Our letter included two sets of
3 comments. First, those related to the project
4 owner's petition; and then several related to
5 discrepancies made evident during submittal, or
6 due to submittal of the petition.

7 I think I'm just going to address our
8 petition comments right now. But I'd be available
9 if you have any need for clarification on our
10 other comments.

11 First, we're not challenging the need or
12 demand for the electricity produced by this
13 project, only how the state goes about obtaining
14 that electricity.

15 Regarding the petition, our key comments
16 are first, that we concur with your staff that the
17 petition does not meet the Energy Commission's
18 requirements for changing an AFC condition.

19 Second, the requested change would not
20 conform to key findings within the AFC decision
21 document, and would not be internally consistent
22 with other requirements in the condition.

23 Our letter cites one of these internal
24 inconsistencies, that is the request to delay the
25 first payment until just before the start of

1 construction, would conflict with the provision of
2 the condition that allows money unspent at the
3 start of commercial operation to be returned to
4 the project owner.

5 This could severely shorten the amount
6 of time the payments could be collected and
7 studies implemented.

8 The request to delay also ignores
9 another provision of the condition, namely that
10 studies resulting from the required funding are
11 meant to assist the Los Angeles Regional Board in
12 carrying out its responsibilities under Clean
13 Water Act, section 316(b).

14 The Board has already started reviewing
15 many of these proposed studies, and further delay
16 of the payment would diminish the condition's
17 intended benefits to the Regional Board.

18 Finally, our letter notes that the
19 requested change, if approved, would likely alter
20 your findings and conclusions related to the
21 project's conformity to the Coastal Act, since it
22 would likely reduce the overall benefits derived
23 from the funding and the resulting studies.

24 We ask that if you do decide to further
25 consider the petition request, that you also

1 suspend the certification and reopen the
2 proceedings to determine how the change would
3 affect the project's Coastal Act conformity.

4 I have just a couple comments on the
5 financial aspect. The main reason given for this
6 request is that the project owner cannot
7 responsibly make substantial payments on the
8 schedule required. And that the viability of the
9 project is at risk if these payments are required.

10 I realize that ESP II is a different
11 entity than its owner, West Coast Power, which is
12 a different entity than Dynegy and NRG. However,
13 if you look at recent SEC filings for the parent
14 companies, their financials seem pretty good.

15 On September 7th they filed a document
16 with the SEC that stated, quote, "the stage is set
17 for significant spending on energy infrastructure"
18 and, quote, "there's substantial cash reserves
19 available for reinvestment related to power
20 production here in the United States."

21 About a month ago NRG announced it would
22 be buying another company for \$5.8 billion with \$4
23 billion of that in cash. To provide a sense of
24 scale, the \$5 million requested -- required by
25 condition Bio-1 represents just slightly more than

1 one-tenth of 1 percent of \$4 billion.

2 If you invested \$4 billion at 5 percent
3 interest, \$5 million represents nine day's worth
4 of interest.

5 It's difficult, therefore, to see how
6 four \$250,000 payments over the next year in a \$5
7 million overall payment threaten the viability of
8 the project.

9 With that, I think I'll close and be
10 happy to answer any questions you have.

11 CHAIRPERSON DESMOND: Thank you. On the
12 phone we have Ms. Shelley -- is it Luce or Luce?

13 MS. LUCE: I'm Shelley Luce.

14 CHAIRPERSON DESMOND: Okay, did you want
15 to add any comments?

16 MS. LUCE: I mainly am here to answer
17 any questions that the Commission might have of
18 the Santa Monica Bay Restoration Commission.

19 CHAIRPERSON DESMOND: Okay, thank you.

20 COMMISSIONER BOYD: I do have a question
21 of the Santa Monica Bay Restoration Commission.
22 I'd like to know what plans have been made so far,
23 and where the Commission stands with regard to
24 carrying out this study that's been referenced
25 here.

1 MS. LUCE: Okay. Well, the Santa Monica
2 Bay Restoration Commission shares the concerns of
3 many in the scientific community about the impacts
4 of coastal power plants on the biological
5 resources in Santa Monica Bay.

6 And we feel that the Bio-1 permit
7 requirement is necessary to fund some very long
8 overdue studies to assess those resources and the
9 impacts on them.

10 In order to do that we would use the
11 money to work with scientists to develop and
12 implement studies. And in order to make those the
13 best possible studies we would need some time to
14 do that.

15 We have a technical advisory committee
16 who will work with us to analyze information needs
17 in the Bay. We actually have funded in the past,
18 out of our own funding, a study to determine what
19 current information needs and data gaps exist.
20 And the final report on that study was submitted
21 to us at the end of October.

22 So we are moving ahead with plans to
23 fill in those gaps. And those are ecological
24 assessment needs.

25 So, our technical advisory committee

1 would work with us to select and prioritize the
2 needs for information and data gathering. And we
3 would then need to find the best researchers to
4 carry out those studies. Design the studies,
5 create contracts and grant agreements.

6 And then before we actually disburse the
7 money, the work is done. So researchers invoice
8 us as they carry out their research.

9 So, it will take some time in order to
10 set up the studies, find the researchers, have
11 them do the work, invoice us for the work, and
12 make the payments.

13 So, I would voice one concern here, and
14 that is that if payments are further delayed, then
15 it could seriously shorten the amount of time that
16 we have available. Since it's my understanding
17 that El Segundo Power can request any unspent
18 money be returned to them at the time that they
19 start commercial operation.

20 Okay, that's it.

21 COMMISSIONER BOYD: Thank you.

22 CHAIRPERSON DESMOND: Further questions.

23 I'm still a little concerned about the lack of --
24 or I shouldn't say the lack of, but rather the
25 ambiguity in the adoption of the plan, given the

1 record here, and going back to Commissioner
2 Keese's comments about not looking to burden the
3 developer with \$5 million, but rather to make sure
4 we initiate funding as quickly as possible to
5 start the study now.

6 And the question was whether or not that
7 decision or the approval of the plan could come
8 back to this Commission without requiring a
9 reopening of the whole proceeding. In other
10 words, having received that from both the project
11 applicant and Santa Monica Bay Restoration
12 Commission, that that comes back to this
13 Commission for final approval.

14 I would not alter the \$5 million.

15 Mr. Chamberlain.

16 MR. CHAMBERLAIN: Well, Mr. Chairman, it
17 appears to me that certainly if the applicant and
18 the Santa Monica Bay Restoration Commission were
19 to agree to a schedule, that was anticipated to be
20 the schedule.

21 If they had a disagreement, then I
22 believe the compliance project manager was
23 designated as the person that would sort of work
24 out that disagreement.

25 But I would think that if the applicant

1 was dissatisfied with that they would always be
2 able to appeal that to the Commission.

3 CHAIRPERSON DESMOND: Thank you.
4 Commissioner Boyd.

5 COMMISSIONER BOYD: As the last
6 surviving member of the Siting Committee for this
7 project, one who stepped in when this process was
8 well underway, I'd like to reflect a little bit on
9 the situation.

10 I'm not sympathetic to the idea of
11 accepting the petition, for a lot of the reasons
12 we've heard today. And I'm going to move
13 ultimately that we accept the staff
14 recommendation.

15 However, I am going to join Commissioner
16 Geesman in, in effect, restating the real problem,
17 that we -- that our findings about the need for
18 electricity and the petitioner here face, and that
19 is the glacial alacrity with which we are
20 finalizing our electricity system in this state.
21 And the glacial alacrity therefore that the
22 procurement process is engaged in.

23 And I have, frankly, sympathy for the
24 proponents here in their efforts to get a contract
25 and to move this issue forward.

1 But this is a bigger policy question,
2 that all agencies involved in this need
3 desperately to address and to move. The decision
4 that the Siting Committee made, and that
5 ultimately this Commission made was predicated on
6 all these types of issues and all of the concerns
7 of many many parties with regard to the ecological
8 environmental health of the Santa Monica Bay. And
9 there are a lot of players there who ought to be
10 held accountable financially for participating in
11 such a study.

12 Commissioner Pfannenstiel and the
13 Chairman have established in dialogue with the
14 staff what I have believed to be the case, that
15 the maximum jeopardy here today is a million
16 dollars. And that there's plenty of opportunity
17 to not make it a \$5 million jeopardy day, and an
18 opportunity to come back at a later date should we
19 not cure our ills in this state and they succeed
20 in getting a contract.

21 I do want to say, speaking for myself,
22 speaking to the proponents here, that you need to
23 take a message back to your management, should
24 this Commission deny your petition, that
25 nonetheless we totally understand the real problem

1 that we all face here with regard to the
2 electricity procurement process in this state.
3 And don't read California wrong via any action
4 this Commission might take with regard to this
5 item.

6 We have problems. We know we need to
7 fix those problems. Certainly those issues are
8 being addressed in the Integrated Energy Policy
9 Report that this whole Commission will address
10 later this month.

11 So, I'm going to move to deny the
12 petition almost with prejudice. And nonetheless,
13 I agree with the staff position on this. And I
14 agree that we have an issue here we need to fix.

15 COMMISSIONER GEESMAN: I'll second.

16 CHAIRPERSON DESMOND: I'll call for the
17 vote. All those in favor of the motion which is
18 to deny the petition?

19 (Ayes.)

20 CHAIRPERSON DESMOND: Opposed? So
21 moved.

22 Item number 7, Valero Refinery Company.
23 Possible approval of a petition from the Valero
24 Refinery Company for a two-year extension of the
25 online date for phase two of the Valero

1 Cogeneration Project, to allow time to consider
2 the viability of phase two, due to the uncertainty
3 of the electricity market. Scott.

4 MR. NAJARIAN: Chuck Najarian --

5 CHAIRPERSON DESMOND: Chuck, okay.

6 MR. NAJARIAN: -- Power Plant Compliance
7 Program Manager. I'll take this item, as well.

8 It concerns a petition to modify the
9 Valero Cogeneration Project. The project is
10 certified as a 102 megawatt gas-fired cogen. It
11 was certified in October of '01. It's owned by
12 Valero Refining Company. It's located within the
13 Valero Refinery in the City of Benecia.

14 The project was certified to be
15 constructed in two 51 megawatt phases. Both
16 phases were originally required to be online no
17 later than December 31 of '02.

18 Phase one was constructed on schedule
19 and commenced commercial operation in December of
20 '02. Phase two is approximately 37 percent
21 complete, and construction is in suspension. On
22 October 22, 2003, the Energy Commission approved a
23 petition to extend the online date for phase two
24 to November 1, 2005.

25 The Valero Refining Company is now

1 requesting a second extension of the phase two
2 online date from November 1, 2005 to November 1,
3 2007. Valero explained that the economic
4 viability of phase two remains uncertain due to
5 unresolved California Public Utilities Commission
6 proceedings considering the imposition of exit
7 fees and the methodology related to pricing and
8 procurement of power.

9 They also reference proposition 80
10 ballot initiative in terms of additional
11 uncertainty.

12 I wanted to add that from the beginning
13 Valero has consistently stated that phase two was
14 contingent on electricity market conditions and
15 resolution of any legislative and/or regulatory
16 uncertainties.

17 We also note that Valero originally
18 proposed to file separate applications for each
19 phase of the project. One was a four-month
20 expedited process for phase one; and a standard
21 12-month process for phase two.

22 Valero cooperated with staff and the
23 Commission in combining both phases of the project
24 into a single application. The original December
25 31 of '02 online date requirement stemmed from the

1 four-month expedited permit process even though
2 ultimately both phases of the project were
3 certified as a 12-month application.

4 Staff assessed the impacts of the
5 petition on electricity supply and determined that
6 a two-year extension should not significantly
7 impact current and the near-term electricity
8 supplies because reserve margins are anticipated
9 to be adequate in northern California during this
10 time.

11 Valero has been working with the local
12 Air Pollution Control District. It appears at
13 this point that Valero's going to receive an
14 extension of their authority to construct.
15 However, if that doesn't occur, and other changes
16 are required by the Air District, we could see
17 another petition to modify, but we're not
18 anticipating that at this time.

19 All the public noticing requirements
20 have been met pursuant to our regulations. We
21 received no public comments. All the necessary
22 findings pursuant to section 1769 of our
23 regulations have been met.

24 Staff is recommending that Valero's
25 petition to extend their online date for two years

1 be approved. Evie Kahl is here and Scott
2 (inaudible) are also here from Valero. They're
3 prepared to make a statement, and answer any
4 questions you might have.

5 CHAIRPERSON DESMOND: Does the applicant
6 wish to make a statement at this time?

7 MS. KAHL: Thank you. Good morning,
8 Chairman Desmond, Commissioners.

9 Mr. Najarian is correct that phase two
10 of the Valero project has always been conditioned
11 on how the energy environment is looking, what the
12 market conditions look like.

13 And that's because phase one was
14 constructed largely to meet both the thermal and
15 electrical demand of the refinery; whereas, phase
16 two, while meeting some thermal demand, was meant
17 largely for electrical export. So in order for
18 that project to be viable there had to be a market
19 for the electricity that would be generated.

20 And as this Commission well knows,
21 that's been an issue since 2001; and it's an issue
22 that persists. And despite your efforts and the
23 draft IEPR and the Energy Action Plan, we haven't
24 been able to take the policies that this state has
25 embraced to encourage cogeneration and implement

1 them in a way that works for Valero in its phase
2 two projects.

3 And there are really three areas of
4 uncertainty right now that the project faces that
5 are preventing Valero from making a financial
6 commitment to move forward with construction.

7 The first area, and the most troubling
8 area, is what are the sales opportunities for the
9 output from this project. The same thing we heard
10 about from El Segundo.

11 As the Commission itself noted in the
12 draft IEPR, we don't have a robust functioning
13 wholesale market. It's not working right now.
14 And if you look at the energy traded in the ISO
15 markets, it's very thin; it's not a place to put
16 this energy.

17 If you look at other options, you look
18 at the PURPA-based standard offer contracts,
19 that's all in flux right now because the PUC is
20 looking at what the state policy will be with
21 respect to the utilities' obligations to purchase.
22 That case has been ongoing for quite awhile. It
23 isn't coming to a conclusion yet. And while we
24 hope that it comes to a conclusion in 2006,
25 there's really no indication of where that case

1 will land.

2 And complicating things, since we filed
3 our petition in July, we have the Energy Policy
4 Act of 2005 that was enacted at the federal level.
5 And that again calls into question the mandatory
6 purchase obligation of the utilities under PURPA.
7 So, again that complicates the PUC's proceeding.

8 While we had hoped that uncertainties
9 would start to resolve themselves over time, the
10 uncertainties in the purchase area have not
11 resolved.

12 There are two other areas, I think
13 they're minor when they're compared to the
14 purchase sale problem, but we have an
15 interconnection question. Currently Valero is
16 connected to the PG&E grid under rule 21, state
17 jurisdiction. There have been issues raised
18 regarding whether that needs to be transformed
19 into a federal interconnection depending on how we
20 come out with the sales contracts for the
21 facilities. So we don't really know what kind of
22 interconnection we would have, and there are
23 different implications for each.

24 And the final issue, which Mr. Najarian
25 raised, is the exit fee question. To the extent

1 that the new project would serve some incremental
2 electrical load at the site, what would the exit
3 fees cost Valero for the remaining load.

4 So those areas of uncertainty are
5 keeping Valero from constructing the facility.
6 And we're requesting today an extension of the
7 online date to November of 2007 hoping that we can
8 get some of these issues resolved before then.

9 Thank you.

10 CHAIRPERSON DESMOND: Thank you. Any
11 questions?

12 COMMISSIONER GEESMAN: Mr. Chairman, the
13 Siting Committee reviewed this matter and
14 recommends the granting of the petition. I should
15 say that this project is a poster child for the
16 ineffectuality of state policy in the cogeneration
17 area.

18 It's a subject given quite a bit of
19 attention in our draft IEPR. I think the two-year
20 extension of the petition may represent the
21 triumph of hope over experience, but I think we
22 should solemnly vow to have this situation
23 resolved well in advance of that two-year
24 extension.

25 CHAIRPERSON DESMOND: Thank you --

1 COMMISSIONER BOYD: I'll second that
2 motion, and just agree with the frustration of
3 this issue and the poster child status of the
4 original --

5 CHAIRPERSON DESMOND: Thank you.

6 All those in favor?

7 (Ayes.)

8 CHAIRPERSON DESMOND: Opposed? So
9 moved. Thank you.

10 Item number 8, Gas Technology Institute.
11 Possible approval of contract 500-05-017 for
12 \$359,990 with the Gas Technology Institute to
13 demonstrate burners capable of reducing NOx
14 emissions by up to 50 percent from current levels
15 with no performance penalties. The burners are
16 utilized in the aluminum remelting industry. Mr.
17 Pramod Kulkarni.

18 MR. KULKARNI: Good morning,
19 Commissioners. (inaudible) --

20 COMMISSIONER BOYD: Pramod, is that
21 mike --

22 COMMISSIONER ROSENFELD: Pramod, your
23 mike's gone off again.

24 COMMISSIONER BOYD: Is the green
25 light --

1 COMMISSIONER ROSENFELD: Tap on it.

2 CHAIRPERSON DESMOND: Green light.

3 MR. KULKARNI: Thank you. The staff is
4 requesting that this particular project be allowed
5 to go ahead and enter into a partnership with GTI,
6 a contract for \$359,990 for a flex-flame burner
7 with a specific site in southern California in
8 Compton called (inaudible) Melters.

9 And the purpose for this project is that
10 this will allow us to reduce the emissions in that
11 specific region by 50 percent for NOx. But more
12 importantly, and that's the reason the Commission
13 is involved, is the energy savings by reducing the
14 waste energy in this specific operation.

15 Melters use a lot of energy,
16 specifically natural gas. There are ten of them
17 in California, nine in southern California. And
18 they use collectively about 1.4 cubic billion feet
19 of natural gas. And, of course, that adds to the
20 emissions.

21 This is also notoriously inefficient
22 systems. The average efficiency is 15 percent.
23 So this specific technology which was developed by
24 GTI in collaboration with USDOE, with a total
25 investment of \$1.2 million. We are coming in on

1 the tail end of this particularly investment and
2 for the industrial demonstration.

3 So we hope that this demonstration will
4 (inaudible) by the industry, possible, and
5 demonstration can reduce NOx and particulate
6 matter by 10 percent, NOx by 50 percent, and
7 energy efficiency about 10 to 20 percent.

8 CHAIRPERSON DESMOND: Questions?

9 COMMISSIONER BOYD: Pramod, is this
10 technology exportable to other boiler combustion
11 operations possible?

12 MR. KULKARNI: This is a furnace
13 technology, flex-flame burners would be exportable
14 to other furnace operation. Also the first
15 demonstration application in California for
16 aluminum because of the highest user of energy in
17 that operation.

18 COMMISSIONER BOYD: I'm impressed with
19 the possibilities here.

20 COMMISSIONER ROSENFELD: Mr. Chairman,
21 this, of course --

22 CHAIRPERSON DESMOND: Microphone.

23 COMMISSIONER ROSENFELD: My problem.
24 This, of course, came before the PIER Committee,
25 and after comment Commissioner Pfannenstiel and I

1 move the item.

2 CHAIRPERSON DESMOND: Thank you.

3 Commissioner Pfannenstiel.

4 COMMISSIONER PFANNENSTIEL: Well, I have
5 no problem with this specific project. It looks
6 quite impressive. But I have asked before that
7 when these PIER projects come before us, that they
8 come in some context. That we see the dollars, in
9 this case the natural gas program dollars, in the
10 context of the overall, both commitments and
11 priorities of the program.

12 And I don't see anything here. So I'll
13 ask again, that every time a PIER project come
14 before us, that it come in a context so that we
15 can understand, as we're reviewing the specific
16 project, where it fits in your priorities.

17 MR. KULKARNI: That's duly noted. Can I
18 ask, can I elaborate on that particular question
19 of yours. Total money, this is the first year
20 money we got from natural gas, which was total, I
21 think, \$12 million. Out of 1. -- and 10.5 was
22 left for RD&D project -- commitment was made for
23 the efficiency project. So this is a part of the
24 efficiency project. So out of the \$5.25 million
25 left this is one project that goes towards that.

1 And the other projects, too. But this is -- if
2 you count that as a portion of \$5.5 million, it's
3 less than 10 percent of the money set aside for
4 energy efficiency for the full set of natural gas
5 funding.

6 CHAIRPERSON DESMOND: This is the second
7 project under the natural gas R&D funds?

8 MR. KULKARNI: That I would not know,
9 because there are some from buildings area, as was
10 ours, so.

11 CHAIRPERSON DESMOND: Okay. Thank you.

12 COMMISSIONER GEESMAN: I'll second the
13 motion.

14 CHAIRPERSON DESMOND: All those in
15 favor?

16 (Ayes.)

17 CHAIRPERSON DESMOND: Opposed? So
18 moved. Thank you.

19 MR. KULKARNI: Thank you.

20 CHAIRPERSON DESMOND: Next item on the
21 agenda are the minutes.

22 COMMISSIONER ROSENFELD: I move the
23 minutes.

24 COMMISSIONER GEESMAN: Second.

25 CHAIRPERSON DESMOND: All those in

1 favor?

2 (Ayes.)

3 CHAIRPERSON DESMOND: Opposed?

4 Commissioner Pfannenstiel is abstaining. So,
5 opposed? So moved.

6 Item number 10, Commission Committee and
7 Oversight. No particular issues at this time.
8 Very good.

9 Chief Counsel's report.

10 MR. CHAMBERLAIN: Yes, Mr. Chairman. At
11 the last meeting I reported on this nice pumpkin-
12 colored filing. And the reply brief has been
13 filed now, and the matter is scheduled for
14 consideration by the Supreme Court on the 10th.
15 And so we may hear about it before the next
16 meeting.

17 CHAIRPERSON DESMOND: Thank you.

18 Executive Director's report.

19 MR. BLEVINS: I have no report, Mr.
20 Chairman.

21 CHAIRPERSON DESMOND: Nothing to add.

22 Legislative Director's report. No.

23 Public Adviser's report.

24 MR. BARTSCH: Mr. Chairman, Members,
25 Nick Bartsch representing Margret Kim. We don't

1 have anything new to report.

2 CHAIRPERSON DESMOND: Okay. Any
3 additional comments from the public, either on the
4 phone or here in person? No.

5 That being the case, I'd like to thank
6 everyone and bring this meeting to a close.

7 (Whereupon at 11:26 a.m., the business
8 meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, CHRISTOPHER LOVERRO, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of November, 2005.

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